

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

CIVIL ACTION
NO. 77-2152

ANTHONY D'AGOSTINO
Petitioner-Appellant

VS

W.R. NELSON, WARDEN, FEDERAL CORRECTIONAL
INSTITUTION, DANBURY, CONNECTICUT
Respondent-Appellee

B
P/S

ON APPEAL FROM A DECISION OF THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR APPELLANT

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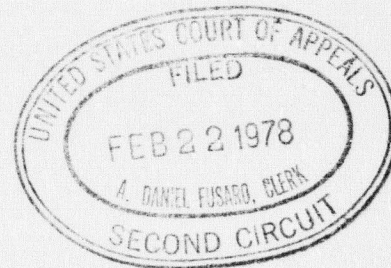


TABLE OF CONTENTS

Statement of the Issues	1
Statement of the Case	2
Argument	
I. The Fact That Appellant Has Been Conditionally Released From Confinement Does Not Render this Appeal Moot.....	4
II. The Doctrine of Exhaustion of Administrative Remedies Does Not Preclude the District Court From Considering Appellant's Petition For A Writ of Habeus Corpus. Such An Assumption by the District Court Was Thus Reversible Error..	6
Conclusion	16

TABLE OF AUTHORITIES CITED

CASES

<u>American Horse Protection Ass'n, Inc. v. Frizzell</u> 403 F. Supp.1206 (D. Nev. 1975).....	9
<u>Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics</u> 403 U.S. 388 (1971).....	5
<u>Board of Regents v. Roth</u> 408 U.S. 564 (1972).....	12
<u>Carroll v. Squier</u> 136 F. 2d 571 (9 Cir. 1943).....	13
<u>Chieppa v. Krimsky</u> 169 F. Supp.337 (S.D.N.Y. 1959).....	13
<u>Cohen v. Ciccone</u> 318 F. Supp.831 (W.D.Mo. 1970).....	13
<u>Cravatt v. Thomas</u> 399 F. Supp.956 (W.D.Wisc. 1975).....	6,7,11,12
<u>Dixon v. State of Florida</u> 388 F. 2d 424 (5 Cir. 1968).....	8
<u>Dunn v. Blumstein</u> 405 U.S. 330 (1972).....	4
<u>Egan v. Teets</u> 251 F.2d 571 (9 Cir. 1957).....	6
<u>Grossberg v. Deusebio</u> 380 F. Supp.285 (D.Va. 1974).....	6
<u>Harris v. Nelson</u> 394 U.S. 286 (1969).....	6
<u>Holland v. Hiatt</u> 50 F. Supp.406 (M.D.Pa. 1943).....	13
<u>Holmes v. United States Board of Parole</u> 541 F. 2d 1243 (7 Cir. 1976).....	8
<u>Howard v. United States</u> 274 F. 2d 100 (8 Cir. 1960), cert. den. 383 U.S. 832..	13
<u>Inre Central Railroad Company of New Jersey</u> 485 F. 2d 208 (3 Cir. 1973).....	8
<u>Johnson v. Alldredge</u> 349 F. Supp.1230 (D.Pa. 1972), affd in part, revd in part on other grounds 488F. 2d 820, cert. den 419 U.S. 882.....	5

<u>Kochie v. Norton</u> 343 F. Supp.956 (D. Conn. 1972).....	8,12,14,15,16
<u>Landman v. Clark</u> 456 F. 2d 215(5 Cir. 1962).....	4,5,16
<u>Lasco v. Koch</u> 428 F. Supp.468 (S.D.Ill. 1977).....	8
<u>Mason v. Ciccone</u> 531 F. 2d 867 (8 Cir. 1976).....	6,8
<u>Mock v. United States Board of Parole</u> 345 F. 2d 737 (D.C. Cir. 1965).....	13
<u>Moore v. City of East Cleveland, Ohio</u> 975 Ct. 1932 (1977).....	12
<u>Patmore v. Carlson</u> 392 F. Supp.737 (D.Ill. 1975).....	5
<u>Perry v. Sindermann</u> 408 U.S. 593 (1972).....	13
<u>Powell v. McCormack</u> 395 U.S. 486 (1969).....	5
<u>Renegotiation Board v. Bannerkraft Clothing Co.</u> 415 U.S.1 (1973).....	8
<u>Roe v. Wade</u> 410 U.S. 113 (1973).....	4
<u>Sibron v. New York</u> 392 U.S. 40 (1968).....	4,5
<u>Smith v. Fenton</u> 424 F. Supp.792 (E.D.Ill. 1976).....	7,10,16
<u>Smith v. State of Kansas</u> 356 F. 2d 654 (10 Cir. 1966), cert den. 389 U.S. 871(1967)..	8
<u>Sosna v. Iowa</u> 419 U.S. 393 (1975).....	4
<u>State of Colorado v. Veterans Administration</u> 430 F. Supp.551 (D.Colo. 1977).....	11,12
<u>Taylor v. Blackwell</u> 418 F. 2d 199 (5 Cir. 1969).....	14
<u>United States ex rel. Colen v. Norton</u> 335 F. Supp.1316 (D.Conn. 1972).....	14

<u>United States ex rel. Harrison v. Pace</u>	
380 F. Supp.107 (D.Pa. 1974).....	5
<u>United States ex rel. Marrero v. Warden, Lewisburg Pen.</u>	
483 F. 2d 656 (3Cir. 1973).....	7,8,11
<u>United States ex rel. Sanders v. Arnold</u>	
535 F. 2d 848 (3 Cir. 1976).....	8
<u>Urban v. Settle</u>	
298 F. 2d 592 (8 Cir. 1962).....	13
<u>Wagle v. Murray</u>	
546 F. 2d 1329 (9 Cir. 1976).....	6
<u>Wald v. Hiatt</u>	
56 F. Supp.504 (M.D.Pa. 1944).....	13
<u>Wipf v. King</u>	
131 F. 2d 33 (8 Cir. 1942).....	13

STATUTORY PROVISIONS

18 US.C. s 4162..... 2,3,5,911,12,13,14,15

18 U.S.C. s 4163..... 9

28 U.S.C. s 1331..... 5,16

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VS

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Respondent-Appellee

ON APPEAL FROM A DECISION OF THE UNITED STATES DISTRICT
COURT FOR THE DISTRICT OF CONNECTICUT

BRIEF FOR APPELLANT

STATEMENT OF THE ISSUES

The two fundamental issues for the Court to consider in the instant appeal are:

1. Whether the fact that Appellant has been granted a conditional release from confinement during the pendency of this appeal renders such appeal moot?
2. Whether the doctrine of exhaustion of administrative remedies precluded the District Court from considering Appellant's petition for a writ of habeus corpus?

STATEMENT OF THE CASE

The case at bar was initially filed with the United States District Court for the District of Connecticut by Petitioner-Appellant, Anthony D'Agostino, prose, in the nature of a petition for a Writ of Habeus Corpus, Civil Action Number B77-325, on

September 13, 1977.

On October 14, 1977, the District Court, Newman J., dismissed Petitioner-Appellant's petition without a hearing for failure to exhaust administrative remedies. The Memorandum of Decision was also entered on that date.

On October 18, 1977, the District Court Clerk entered Judgment in favor of Respondent-Appellee and the petition for a Writ of Habeus Corpus was thus dismissed.

On November 2, 1977, Petitioner-Appellant filed his Notice of Appeal from Judgment as well as his Motion for Leave to Proceed in Forma Pauperis in the United States District Court.

On November 7, 1977, the District Court, Newman J., granted Petitioner-Appellant's Motion for Leave to Proceed in Forma Pauperis.

On October 14, 1976, Appellant was sentenced to an eighteen month period of incarceration at F.C.I., Danbury, Connecticut. On January 4, 1977, Appellant was assigned to work at the power plant in Danbury, which work he performed skillfully and diligently. From January through March, 1977, Petitioner did not, however, receive his nine days of industrial good time pursuant to 18 U.S.C s 4162 solely as a result of the negligence of his divers supervisors who failed to submit the Work Reports, and who told Appellant that no administrative remedies existed to rectify the oversight. Moreover, Appellant was advised that if he would turbine three boilers for FCI, Danbury, he would receive a total of 40 days of extra meritorious good time pursuant to 18 U.S.C. s 4162 for "performing exceptionally

meritorious service or performing duties of outstanding importance in connection with institutional operations." This "good time," Appellant was notified, would be used to deduct time from his sentence in addition to his regular good conduct time and industrial good time. Despite the fact that Appellant was commended for his "outstanding" performance which "resulted in a great financial savings to the institution" and earned such additional good time, he was denied the deduction from his sentence of over forty days. The sole reason cited for not granting such deduction was that Appellant could not absorb the time under 18 U.S.C. s 4162. Prior to late August or early September, Appellant Anthony D'Agostino had assumed that his regular good conduct time and industrial good time under 18 U.S.C. s 4162 would advance his release date from December 26, 1977 to October 3, 1977. At this time, however, Appellant was first notified that his release date was scheduled for November 16, 1977, and not, October 3, 1977. [See Appellant's Affidavit].

ARGUMENT

I. THE FACT THAT APPELLANT HAS BEEN CONDITIONALLY
RELEASED FROM CONFINEMENT DOES NOT RENDER THIS
APPEAL MOOT.

The fact that during the pendency of the instant appeal Appellant has been granted a conditional release from confinement does not render this appeal moot. See Egan v. Teets, 251 F.2d 571, 573 (9 Cir. 1957); Sibron v. New York, 392 U.S. 40 (1968), Landman v. Clark, 456 F.2d 215, 216 (5 Cir. 1972).

Given that full appellate process to the United States Supreme Court normally takes more than one year, where the wrong complained of is limited in duration, an obvious practical impossibility of achieving appellate review before the claim of the individual plaintiff becomes moot exists. The United States Supreme Court has consequently resolved this problem by allowing review despite the mootness in light of the recurring nature of the injury. See Dunn v. Blumstein, 405 U.S. 330 (1972); Sosna v. Iowa, 419 U.S. 393 (1975); Roe v. Wade, 410 U.S. 113 (1973); Grossberg v. Deusebio, 380 F. Supp. 285, 292 (D.Va. 1974). Thus, even if this Court were to conclude that Appellant's release from custody would otherwise moot his individual petition for the writ of habeas corpus, such a decision based upon this finding would not be warranted in the instant case. Here, Appellant was in fact incarcerated on December 23, 1976 and would have been released on December 26, 1977 had his release date not been advanced to November 16, 1977. Thus, if this Court were to dismiss this case as moot

then no prisoner who is confined to a federal correction institute for approximately a year, or less, would ever have an opportunity to contest the construction or the constitutionality of 18 U.S.C. s 4162. Such a phenomenon would assuredly be untenable in our criminal justice system.

Another exception to the mootness doctrine is where the principal issue of the lawsuit has been resolved by the passage of time but the party maintains an interest in resolving other matters. See Powell v. McCormack, 395 U.S. 486 (1969); Sibron v. New York, *supra*. Here, Appellant seeks a reversal of the District Court decision and a remand with leave to amend his petition to include a complaint for money damages which would give Appellant the continued interest contemplated by the caselaw. See Landman v. Clark, *supra* at 216; United States ex rel. Harrison v. Pace, 380 F. Supp.107, 110 (D.Pa. 1974); Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics, 403 U.S. 388 (1971). Moreover, since Appellant intends to file a Civil complaint in the District Court of Connecticut for money damages pursuant to 28 U.S.C. s 1331(a), dismissal of this action on mootness grounds would only serve to undermine the attempt by the federal judiciary to conserve its time and public expense. See Patmore v. Carlson, 392 F. Supp. 737, 739-740 (D.Ill. 1975); United States ex rel. Harrison v. Pace, 380 F. Supp. ^{107 (D.Pa. 1974)} Johnson v. Alldredge, 349 F. Supp.1230, 1232, 1233 (D.Pa. 1972), affirmed in part, reversed in part on other grounds 488 F. 2d 820, cert. denied 419 U.S. 882.

II. THE DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES DOES NOT PRECLUDE THE DISTRICT COURT FROM CONSIDERING APPELLANT'S PETITION FOR A WRIT OF HABEUS CORPUS. SUCH AN ASSUMPTION BY THE DISTRICT COURT WAS THUS REVERSIBLE ERROR.

The exhaustion of (administrative remedies) rule is not to be 'woodenly' applied. Morgan v. La Vallee, 526 F. 2d 221, 223 (2d Cir. 1975) 'Application of the rule is not jurisdictional, but calls for the sound exercise of judicial discretion.' Kale v. United States, 489 F. 2d 449, 454 (9th Cir. 1973). Even in those areas of the law in which exhaustion of administrative remedies is generally required, judicial review will not be denied for failure to exhaust such remedies unless, on balance, the interests served by requiring exhaustion outweigh the injury the complainant would suffer if exhaustion were required. McKart v. United States, 395 U.S. 185, 197... (1969); McGee v. United States, 402 U.S. 479, 484... (1971)....

Wagle v. Murray, 546 F. 2d 1329, 1332 (9 Cir. 1976) See also, Cravatt v. Thomas, 339 F. Supp. 956, 968 (W.D. Wisc. 1975). In the instant case, which arises on appeal from the posture of a dismissal of a petition for a writ of error, the fact that the injury sustained to the appellant outweighs the benefits derived by requiring exhaustion will be clearly and unequivocally evinced below. Here, especially, the exhaustion doctrine should not be rigidly employed for

{there is no higher duty of a court, under our constitutional system, than the careful processing and adjudication of petitions for writs of habeus corpus, for it is in such proceedings that a person in custody charges that error, neglect, or civil purpose has resulted in his unlawful confinement and that he is deprived of his freedom contrary to law.

Harris v. Nelson, 394 U.S. 286, 292 (1969); see also, Mason v. Ciccone, 531 F. 2d 867, 869 (8 Cir. 1976).

Moreover, where, as in the case at bar, the relevant statutes do not provide that certain administrative procedures shall be the exclusive remedy, "the applicability of the exhaustion doctrine to a particular case is within the court's discretion." Cravatt v. Thomas, supra at 968. See also, United States ex rel. Marrero v. Warden, Lewisburg Pen., 483 F. 2d 656, 659 (3 Cir. 1973); Smith v. Fenton, 424 F. Supp. 792, 795 (E.D. Ill. 1976). A decision, then, to require a party to

seek a remedy through administrative procedures before resort to the courts should not be made without a careful analysis of those administrative procedures. The more closely the particular administrative procedures resemble court procedures, the more forceful the argument that postponing access to the courts does no injustice to the aggrieved party. That a particular set of administrative procedures is subject to, and in conformity with, the provisions of the A.P.A. cuts in favor of an exhaustion requirement. The inmate grievance procedures at issue here seem clearly not to conform with the dictates of the A.P.A. For example, the initial arbiter of inmate grievances is the institutional staff, including the warden, who are frequently party to the dispute giving rise to the grievance as these present cases reveal. Much of the law relating to the exhaustion requirement has been developed in the context of administrative procedures much more substantial than 2001.6A. Law developed in such a context is of little significance in the present cases. I do not believe that a court should yield too readily to a desire to be spared additions to its caseload. The respondents here should be required to make a showing of particularized need that each individual petitioner before me should be required to exhaust the 2001.6A procedures.

Cravatt v. Thomas, supra at 969.

A. The Exhaustion Rule Is Not Required Where THE Administrative Remedy Is Inadequate Or Where Irreparable Injury Will Result.

(Exhaustion of administrative remedies should not be an unyielding principle. Consideration should always be given to the gravity of the matter complained of and the realistic availability of a prompt and effective administrative remedy.

Kochie v. Norton, 343 F. Supp.956, 960 (D.Conn. 1972). See also, In re Central Railroad Company of New Jersey, 485 F. 2d 208, 225 (3 Cir. 1973). Clearly, one judicially created exception to the exhaustion doctrine is where "the administrative remedy is inadequate, or will either cause or fail to prevent irreparable harm...." United States ex rel. Sanders v. Arnold, 535 F. 2d 848, 852 (3 Cir. 1976). See also, Renegotiation Board v. Banner-craft Clothing Co., 415 U.S. 1, 24 (1973). In Mason v. Ciccone, supra at 871, the Eighth Circuit Court of Appeals noted, in the context of a petition for a habeus corpus, that "the lapse of time between submission and disposition can render administrative relief inadequate. See Dixon v. State of Florida, 388 F 2d 424, 425 (5 Cir. 1968); Smith v. State of Kansas, 356 F 2d 654, 656 (10 Cir. 1966), cert. denied, 389 U.S. 871...(1967)." Thus, "exhaustion will not be required where the litigant will be subject to irreparable injury due to lengthy administrative procedures which fail to provide interim relief."² Lasco v. Koch, 428 F. Supp.468, 471 (S.D.Ill. 1977). See also, United States ex rel. Marrero v. Warden, supra at 659; In re Central Railroad Company of New Jersey, supra at 225; Holmes v. United States Board of Parole, 541 F. 2d 1243, 1247-1248 (7 Cir. 1976); Kochie v. Norton, supra at

959 {for the similar proposition that the exhaustion requirement is to be waived where pursuing the administration remedy would be futile}.

Demonstrative of the irreparable injury stemming from the time involved in exhausting administrative remedies is American Horse Protection Ass'n, Inc. v. Frizzell, 403 F. Supp. 1206, (D.Nev. 1975) wherein the Bureau of Land Management decided to round up 400 wild horses and sell them to private individuals and plaintiff sought injunctive relief from the United States District Court, in lieu of pursuing its administrative remedies to exhaustion with the Department of Interior. There, the District Court concluded that

...any administrative remedy available to plaintiff through BLM is clearly inadequate, since the round up is proceeding. The time entailed in review through administrative channels will make this litigation moot: the horses will have been captured and given to private citizens who have applied for a horse. The injury to plaintiff's interest in these 400 wild horses will be irreparable if plaintiff is required to appeal to the Department of Interior. This is a case where the doctrine of exhaustion should not be invoked.

American Horse Protection Ass'n, Inc., supra at 1215.

Similarly, in the present case for appellant to have pursued his administrative remedy would have been in vain. The institutional staff did not notify appellant that his "industrial good time" earned pursuant to 18 U.S.C. s 4162 could not be completely "absorbed" until late August or early September. Prior to that time, Appellant reasonably expected to be discharged pursuant to 18 U.S.C. s 4163 from confinement on October 3, 1977. At that time, however, appellant first learned that he would not

be released until November 16, 1977, as a consequence of the "non-absorption."³ To pursue his administrative remedies as provided by the Bureau of Prisons Policy Statement 2001.6A would have been unavailing given that "if a prisoner acts promptly, his administrative grievance will be handled within 75 days of the event that he is protesting"--the 75 day maximum being the length of time involved in completing the administrative process, BP-DIR-9 through 11.⁴ Smith v. Fenton, supra at 799. In light of the fact that appellant had anticipated being discharged within 40 days from the time of being notified otherwise, late August or early September to October 3, the "75 day" administrative process as contemplated by Policy Statement 2001.6A was obviously an untenable avenue to follow. Assuredly then, the administrative remedy would have been ineffective and inadequate even if ultimately decided in appellant's favor. Thus, too, the exhaustion requirement would have caused appellant irreparable injury since his unlawful confinement at the Federal Penitentiary, Danbury, Connecticut from October 3 to November 16, would have been irretrievable and uncompensable. The "old legal adage: Justice delayed is justice denied..." then is entirely apposite in the instant case. Smith v. Fenton, supra, at 797. Consequently, for the District Court, Newman, J., to dismiss appellant's petition for habeas corpus for failure to exhaust administrative remedies was unwarranted, and should be deemed reversible error.

B. The Exhaustion Doctrine Is Inappropriate Where The Sole Issue Involved Is Statutory Construction.

The caselaw unequivocally bears out the principle that exhaustion is unsuitable "when only issues of... statutory construction are at stake. McKart v. United States, supra, 395 U.S. at 196." Cravatt v. Thomas, supra, at 970. See also, United States ex rei. Marrero v. Warden, supra, at 659; State of Colorado v. Veterans Administration, 430 F. Supp.551, 558 (D.Colo. 1977). In the case at bar, the sole substantive issue confronting the District Court revolved around the construction of 18 U.S.C. s 4162. In his petition for a writ of habeus corpus, appellant contended that his confinement at F.C.I., Danbury, Connecticut, beyond October 3, 1977, contravened his statutory rights as provided by 18 U.S.C. s 4162. Such statutory provision, appellant asserted, contemplates "a deduction from his sentence of not to exceed three days for each month of actual employment," and, in the conjunctive, "a deduction from his sentence of not to exceed three days... may also be made to a prisoner performing exceptionally meritorious service or performing duties of outstanding importance in connection with institutional operations." (emphasis supplied). Thus, appellant construes 18 U.S.C. s 4162 to allow for a deduction of at a maximum of six days per month--three days for "actual employment in an industry or camp" and three days for "exceptionally meritorious services." The determination as to the proper construction of 18 U.S.C. s 4162, appellant maintains, lies directly and exclusively in the jurisdiction of the federal court, and not with the Bureau of

Prisons, whose agents, parenthetically, advised appellant, prior to his filing a petition for a writ of habeus corpus, that no administrative remedies existed.⁵

C. The Exhaustion Rule Does Not Apply Where The Constitutionality Of A Statute Is At Issue.

Where solely "issues of constitutional interpretation...are at stake," the exhaustion requirement is inapplicable, and so, unjustified. See Cravatt v. Thomas, supra at 970; Mckart v. United States, supra at 196; State of Colorado v. Veterans Administration, supra at 558; Moore v. City of East Cleveland, Ohio, 975. Ct. 1932, 1935 (1977); Kochie v. Norton, supra at 959-960.⁶ Thus, even if the Court were to construe 18 U.S.C. s 4162 to allow, at a maximum, a deduction of three days per month, then the entire statute, appellant urges, violates the Due Process Clause of the Fifth Amendment to the United States Constitution.

The appellant in the case at bar had in fact earned industrial and meritorious good time pursuant to 18 U.S.C. s 4162 totalling forty-four days which were not then deducted from his release date. The reason for not applying these days was that under 18 U.S.C. s 4162 the "deduction from his sentence" may not "exceed three days for each month" or a total of thirty-six days. The forty-four days of which appellant was deprived exceeded that thirty-six day maximum. Such statute thus deprives prisoners, including appellant, their statutory right to "earned" good time without notice and a hearing as mandated by procedural due process under the Fifth Amendment. See Board of Regents v. Roth, 408 U.S.

564, 577 (1972); Perry v. Sindermann, 408 U.S. 593 (1972).

The federal caselaw comports with the thesis which appellant here espouses. Thus, in Carroll v. Squier, 136 F. 2d 571, 573 (9 Cir. 1943), the Court specifically held that

(when the good time allowance, the granting of which, in the first instance, is in the nature of a privilege bestowed by the legislature, is earned, it becomes a matter of right, enforceable by habeas corpus proceedings. (emphasis supplied).

Again, in Cohen v. Ciccone, 318 F. Supp. 831, 838-839 (W.D. Mo., 1970), the Court noted that

(the cases are unanimous that the earning of meritorious good time under s 4162 is a privilege and that the right to credits thereunder does not vest until the credits are earned.

See also, Howard v. United States, 274 F. 2d 100, 103 (8 Cir. 1960), cert. denied, 383 U.S. 832; Mock v. United States Board of Parole, 345 F. 2d 737, 739 (D.C. Cir. 1965); Urban v. Settle, 298 F. 2d 592, 593 (8 Cir. 1962).

Such statutory right thereby amounts to an entitlement which cannot be taken away without notice and a hearing. The fact that this statutorily imposed property right is defeasible, that is, subject to forfeiture upon "violation of the terms of... one's conditional release," further enhances appellant's argument. Wipf v. King, 131 F. 2d 33, 33-34 (8 Cir. 1942). See also, Howard v. United States, *supra* at 103; Bragg v. Huff, 118 F. 2d 1006, 1006-1007 (4 Cir. 1941); Wald v. Hiatt, 56 F. Supp. 504, 505 (M.D. Pa. 1944); Holland v. Hiatt, 50 F. Supp. 406, 407 (M.D. Pa. 1943); Chieppa v. Krinsky, 169 F. Supp. 337, 341 (S.D. N.Y. 1959). "Such forfeiture

or withholding of industrial good time," the United States District Court of Connecticut concluded,

should be treated in the same manner procedurally as the methods employed in the forfeiture or withholding of statutory good time.

United States ex rel. Colen v. Norton, 335 F.Supp.1316, 1318 (D.Conn. 1972). The Norton Court, at 1317-1318, continued as follows: "an inmate is granted certain procedural safeguards before this good time may be forfeited." Such safeguards included "the appearance and cross-examination of witnesses, the reporting of the hearing, and the assistance of a member of the staff to represent the inmate." Consequently, the "discretion of the prisons officials may not be exercised in a capricious or discriminatory manner...." Norton, supra at 1318. See also, Taylor v. Blackwell, 418 F. 2d 199, 200-201 (5 Cir. 1969). Since 18 U.S.C. s 4162 thus authorizes the forfeiture or withholding of earned industrial good time without notice and a hearing, the Court must deem such statute an unconstitutional violation of the Due Process Clause of the Fifth Amendment to the United States Constitution.

D. The Sole Case Upon Which The District Court Relied In Dismissing Appellant's Petition For A Writ of Habeus Corpus In Fact Supports Appellant's Position.

The District Court of Connecticut in Kochie v. Norton, supra at 959-961 specifically noted that the exhaustion of administrative remedy's doctrine is to be rejected where resort to it is futile, where constitutional rights are at stake, and where a prompt and effective administrative remedy is unavailable. Appellant has

clearly and unequivocally established that not one, but all three, circumstances wherein the exhaustion doctrine is to be rejected exists.

Moreover, the Kochie Court at 957, 962 expressly alluded to another exception to the exhaustion requirement, that is, a complaint regarding the proper "computation of the sentence to be served." Here, again, the appellant falls within the exception to the exhaustion rule for he is in essence disputing the computation of his length of sentence in light of his deductions earned for industrial good time pursuant to 18 U.S.C. s 4162.

III. CONCLUSION

In view of the foregoing analysis, Appellant Anthony D'Agostino respectfully submits that the decision of the District Court (Newman, J.) dismissing the petition for a writ of habeus corpus for failure to exhaust administrative remedies be reversed, and that the case be remanded to the District Court with leave to amend the petition to include a complaint for money damages. See Landman v. Clark, 456 F. 2d 215, 216 (5 Cir. 1972). Granting such relief will conserve judicial time and expense given that Appellant intends to file a complaint for money damages in the District Court pursuant to 28 U.S.C. s 1331 predicated upon the same grounds for which he sought relief in form of a petition for a writ of habeus corpus. See Smith v. Fenton, *supra* at 794; Kochie v. Norton, *supra* at 960.

Anthony D'Agostino
for se

FOOTNOTES

1. Bureau of Prisons, Policy

Statement 2001.6A states:

If an offender cannot resolve his complaint through informal contact with staff, and wishes to file a formal complaint for administrative remedy, he should secure a copy of form BP-Dir-9 and write his complaint in the space provided. He may obtain assistance from other offenders or from staff to help him complete the form. The offender should then give the completed form to the designated staff member who in turn will provide a signed receipt for him. Distribution of the copies of each form is noted on each page.

The complaint ordinarily must be filed within 30 days from the date on which the basis of the complaint occurred unless it was not feasible to file within such period. Institution staff have up to 15 days from receipt of the complaint, excluding week-ends and holidays, to act upon the matter and provide a written response to the offender. When the complaint is of an emergency nature and threatens the offender's immediate health or welfare, reply must be made as soon as possible, and within 48 hours from receipt of the complaint. The institution duty officer may be utilized in such instances.

* * * * *

If an offender is not satisfied with the institution's response, he may file an appeal to the Regional Director, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Warden's response. This should be done on form BP-DIR-10 and must include a completed copy of BP-Dir-9 (the initial complaint) with the institution's response. A receipt for his appeal will be sent to the offender by the Regional Director, who will then reply within 20 days from receipt of the appeal, excluding week-ends and holidays.

If the offender is not satisfied with the reply from the Regional Director, he may file a further appeal to the Assistant Director, Office of General Counsel and Review, Bureau of Prisons, through the Prisoners' Mail Box within 30 days of receipt of the Regional Director's response. This should be done on form BP-DIR-11, and must include a completed copy of both the form BP-DIR-9 (the original complaint) and the form BP-DIR-10 (appeal to the Regional Director). A receipt for this appeal will be sent to the offender and within 20 days from that date, excluding week-ends and holidays, a reply will be made.

* * * * *

If the time limit expires without a reply, it will be deemed to be a denial of the request. If dissatisfied with the response to his complaint and appeals, the offender is free to file suit in an appropriate court and attach documentary proof that he exhausted his administrative remedy. (Emphasis included.)

2. Note that Policy Statement 2001.6 does not provide for interim relief of release from custody pending the outcome of the administrative appellate process.
3. See Appellant's Affidavit.
4. See Policy Statement 2001.6A.
5. See Brief of Appellant, *Infra* at 3.
6. Other federal courts, however, require a more rigid standard in order to fall within the exception of the exhaustion rule:

(a) further exception to this rule exists in those cases involving the presence of constitutional questions, coupled with a showing of inadequacy of the prescribed administrative relief against the background of threatened or impending irreparable injury flowing from the delay incident to pursuit of the available administrative processes.

McGrath v. Weinberger, 541 F.2d 249, 251 (10 Cir. 1976).

See also, Continental Research Corp. v. Train, 426 F. Supp. 713, 714 (E.D. Mo. 1976). As demonstrated above in I.A. of the Argument, appellant assuredly meets the added requirement of irreparable injury stemming from inadequate administrative remedies. Moreover, as will be evidenced in I.C. of the Argument, appellant clearly raises a question of constitutional magnitude.

AFFIDAVIT

I, Anthony D'Agostino, Appellant, do hereby solemnly swear and depose upon my oath that I had expected to be released from FCI, Danbury, Connecticut, on October 3, 1977 as a consequence of the "good time" which I had earned. I first learned that my release date was scheduled for November 16, 1977, and not October 3, in late August or early September. The sole reason that the prison authorities cited was that I could not absorb any further "good time" pursuant to 18 U.S.C. s 4162.

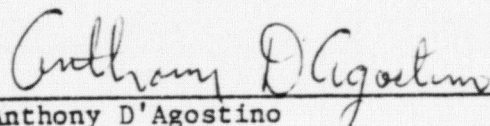
Signed under the pains and penalties of perjury this 20th day of February, 1978.

Anthony D'Agostino
Anthony D'Agostino

CERTIFICATE OF SERVICE

I Anthony D'Agostino, hereby certify that I have served
a copy of the foregoing Brief for Appellants by mailing a copy
to:

Diana Garfield, Asst. U.S. Attorney
c/o Richard Blumenthal
U.S. Attorney
P.O. Box 1824
New Haven, Conn. 06508



Anthony D'Agostino

